

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-499

AUGUST TERM, 2007

Nancy J. Colleran	}	APPEALED FROM:
	}	
	}	
v.	}	Orleans Family Court
	}	
Harold Colleran	}	DOCKET NO. 73-6-06 Osfa
	}	

Trial Judge: David Sleigh

In the above-entitled cause, the Clerk will enter:

Plaintiff Nancy Colleran appeals from a decision of the Orleans Family Court denying her application for a final order for relief from abuse against her husband Harold Colleran. Plaintiff contends the court erred in: (1) concluding that the evidence was insufficient to establish that defendant attempted to place her in fear of imminent serious physical harm, and (2) finding that plaintiff was a “willing participant and abettor” of defendant’s use of firearms in the marital home. We affirm.

The record discloses as follows. The parties were married in November 2000 and separated in March 2006. Plaintiff filed for relief from abuse the following June, and was granted a temporary order. Following an evidentiary hearing in June, the court extended the temporary order for three months. The hearing continued thereafter in October 2006, after which the court issued a written order, in November 2006, denying plaintiff’s request for a final abuse-prevention order and vacating the temporary order. This appeal followed.

The court’s order contains relatively few factual findings. The hearing transcript, however, discloses the following. Plaintiff testified that shortly after they were married, defendant, an avid gun collector, stored many firearms—including loaded handguns and rifles—in the bedroom and bathroom of their home, which was located in a remote rural area. Plaintiff testified that defendant frequently shot at animals through the windows of the house and at a firing range nearby. Plaintiff’s son, who was seventeen-years old at the time of these proceedings, corroborated plaintiff’s testimony in this respect, estimating that defendant kept fifty to 100 guns in the house, which were loaded at times, and that he shot at animals such as raccoons, crows, and skunks through the windows of the house. Plaintiff testified that she asked defendant not to use his guns in this fashion because it scared her and raised concerns about the safety of her son, but defendant, in response, often became angry and occasionally broke plates and glasses.

Defendant became seriously ill in March 2003 and was hospitalized for periods at Dartmouth Hitchcock Medical Center and in Boston. Plaintiff testified that defendant thereafter became depressed and angry and on one occasion, when they were returning from Boston, tried to grab the

steering wheel from her and drive off the road. Plaintiff also testified that, following his illness, defendant became suicidal and that mental health counselors instituted a safety plan to govern access to his guns. Plaintiff recounted at the hearing that defendant had threatened that, if she filed for divorce, he would harass and abuse her as he had his first wife. Plaintiff testified that defendant forcibly took the telephone from her several times when she threatened to call the police, and on one occasion ripped the telephone cord out of the wall. Plaintiff stated that defendant appeared to believe that she had attempted to defraud him, had overmedicated him, and had intentionally undernourished him after his illness, and she feared that defendant planned to retaliate against her. She acknowledged that defendant had not caused her serious physical harm but claimed to be in fear that he would cause her harm based upon his prior behavior and his belief that she had acted against him. Defendant ultimately moved out of the house in March 2006 and filed for divorce. As noted, plaintiff filed for relief from abuse the following June.

Defendant denied plaintiff's allegations that he frequently became angry at her, forced her not to call the police or ripped the telephone from the wall, or that he had threatened her in any way. He acknowledged keeping many guns in the home but claimed that they were generally unloaded, and asserted that he had fired at animals out of the windows only once or twice. He also acknowledged harboring the belief that plaintiff had misused his credit cards and that, when he was ill, she had tried to "isolate" him, abused a power of attorney, overmedicated him, improperly fed him, and generally took "advantage of [him] in a weakened and vulnerable state."

Apart from several findings setting forth the date of the parties' marriage, separation, and divorce, the court made specific factual findings with respect only to defendant's guns, finding that he kept many firearms in the marital home, together with ammunition, and on occasion fired weapons from inside the house. The court further found, however, that plaintiff's claim that she felt threatened by this behavior was "largely belied by her son's testimony who described Plaintiff as a willing participant and abettor of her husband's above described behavior." In addition, the court generally found that plaintiff had "failed to present other credible evidence of abuse," and that, apart from evidence showing that defendant was "angry and disagreeable," plaintiff had "introduced no evidence that he ever caused her physical harm or attempted to place her in fear of serious bodily injury."

We will uphold factual findings of the trial court if supported by credible evidence, and its conclusions if reasonably supported by the findings. Coates v. Coates, 171 Vt. 519, 520 (mem.). In an abuse-prevention proceeding, the plaintiff bears the burden of proving by a preponderance of the evidence that the defendant has committed abuse either by attempting to cause or causing physical harm or by placing another in fear of imminent serious physical harm. 15 V.S.A. 1101(1).

Plaintiff raises two claims concerning the sufficiency of the evidence, one specific and one general. Specifically, she contends the evidence fails to support the court's finding that plaintiff's concern about defendant's use of guns was "belied" by her son's testimony that plaintiff was "a willing participant and abettor" of defendant's behavior. We have reviewed the testimony of plaintiff's son, which was quite brief and essentially corroborated plaintiff's testimony concerning the number of guns and the frequency of their use by defendant, as well as the necessity of a safety plan. The only testimony that remotely connects plaintiff to defendant's use of guns, however, was the son's acknowledgment that plaintiff occasionally "watched" defendant target practice. This is a far sight, however, from being a "participant" in or "abettor" of defendant's behavior. Thus, we conclude that the evidence does not support this finding.

Plaintiff further contends, more fundamentally, that the record does not support the court's finding that she failed to adduce evidence showing that defendant placed her in fear of imminent physical harm. As plaintiff observes, the record contains ample testimony in which she claimed that defendant had engaged in angry outbursts, forced her not to call the police, destroyed household items, and verbally harassed her. The trial court is uniquely placed to evaluate the credibility of witnesses, however, and the court here plainly did not find her claims of abuse to be credible. See Begins. v. Begins, 168 Vt. 298, 301 (1998) (recognizing the trial court's "unique position to assess the credibility of witnesses and weigh the evidence"). We have closely reviewed the record evidence, moreover, and must conclude that even if the court had believed plaintiff's allegations and her stated concerns, they would not support a finding that plaintiff was placed in fear of "imminent serious physical harm." 15 V.S.A. § 1101. Plaintiff did not testify that defendant had ever threatened her with his guns, nor was there any evidence that defendant had shot or displayed his guns in her presence since he moved out of the home in March 2006, more than three months before the first hearing in June 2006, and six months before the continued hearing in October 2006. Moreover, nearly every other instance in which plaintiff claimed that defendant had become angry, grabbed the telephone from her, broken plates or glasses, or been suicidal occurred between March 2003 and mid-2005. She testified that defendant had acted "very edgy" when he retrieved his guns from the marital home in March 2006, but this does not appear to represent a real threat, and it occurred three months before the hearing in June 2006. Furthermore, when the hearing continued in October 2006, plaintiff recounted that defendant had not made any direct threats to her during the intervening three months; she merely recounted hearing from a third party who allegedly overheard defendant make threatening remarks in a general store. Again, this does not support a finding that plaintiff was reasonably in fear of imminent serious physical harm. Accordingly, we find no basis to disturb the court's finding that plaintiff failed to demonstrate abuse entitling her to a final-relief-from-abuse order.

If new activity occurs that meets the terms of the statute, however, plaintiff may file a new petition for relief from abuse.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice